



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 624055

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial monetary determination ruling the claimant not entitled to receive benefits, effective March 28, 2022, on the basis that the claimant was unable to file a valid original claim pursuant to Labor Law § 527 because the claimant did not work and earn wages in at least

two quarters of either his basic or alternate base period, and was not paid at least \$2,900 in wages in one of the calendar quarters of his basic base period. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor. By decision filed May 27, 2022 (A.L.J. Case No. ), the Administrative Law Judge overruled the initial monetary determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant was employed as a groundskeeper by the employer rental agency from October 17, 2021 until February 11, 2022, when his employment ended under circumstances not at issue. He

filed a claim for unemployment benefits on Sunday April 3, 2022, and his claim was made effective March 28, 2022, the Monday of that week.

The claimant's filing established a basic base period of the fourth quarter of 2020 through the third quarter of 2021 (October 1, 2020 through September 30, 2021). The claimant did not work anywhere during that period, and had no earnings in the basic base period of his claim.

The claimant's filing established an alternate base period of the first quarter of 2021 through the fourth quarter of 2021 (January 1, 2021 through December 31, 2021). The claimant had earnings from employment in the fourth quarter of 2021 in the amount of \$4,976. The claimant had no other income earned in 2021.

OPINION: A claimant must file a "valid original claim" as a first step in qualifying for unemployment benefits. Pursuant to the provisions of Labor Law §527, a valid original claim is a claim filed by a claimant who is able to

work and available for work, not subject to any disqualification or suspension, any previously established benefit year has expired, and the claimant has been paid remuneration by employers liable for contributions or for payments in lieu of contributions, other than employers from whom the claimant lost employment due to misconduct, for employment during at least two calendar quarters of the base period, with total base period remuneration of one and one-half times the high calendar quarter remuneration, and with at least \$2,900 of such remuneration being paid during the high calendar quarter in the relevant base period; that is, either the basic or alternate base period established by his claim. See Labor Law §520.

The evidence establishes that the claimant filed a claim for benefits on April 3, 2022, which was made effective March 28, 2022, according to Department of Labor Rules and Regulations, § 473.1(b). That section of the Industrial

Commissioner's regulations provides, "A claimant shall file an original claim and register for employment on any day from Monday through Friday. Any claim filed in accordance with this section shall be deemed filed as of the first day of the claimant's unemployment in the statutory week in which filed, excluding, however, any prior day on which a disqualifying condition would have existed if the claimant had actually filed on such day." March 28, 2022 was the first day of the claimant's unemployment in the statutory week ending

April 3, 2022.

The claimant's filing established a basic base period of the fourth quarter of 2020 through the third quarter of 2021 (October 1, 2020 through September 30, 2021); and an alternate base period of the first quarter of 2021 through the fourth quarter of 2021 (January 1, 2021 through December 31, 2021). The evidence establishes that the claimant had no earnings in any quarter of his basic base period, and had earnings in only one calendar quarter of the alternate base period of his claim. Accordingly, the claimant has not established that he had sufficient earnings in either his basic or alternate base period to establish a valid original claim for benefits under the Labor Law.

We are not persuaded that the "exclusion" clause of 12 NYCRR § 473.1(b)

requires a different result. The hearing decision's reliance on that language, and on its application in Appeal Board No. 557415, is misplaced. We note that Appeal Board No. 557415, is factually distinguishable from the matter now before the Board, since the issue in that case was the accrual of effective days in connection with a claimant's refusal of employment, while the issue now before the Board is whether the claimant has sufficient base period earnings to establish a valid original claim. Thus, the case relied upon is not applicable or dispositive.

Further, the analysis in the hearing decision conflates the issues of whether a claimant is able to file a valid original claim based upon his earnings, and whether the claimant has engaged in disqualifying conduct after his separation from employment and before filing his claim, improperly merging issues of monetary determinations such as the one at issue, and nonmonetary determinations.

Since the evidence fails to establish that the claimant had earnings in at least two quarters of either his basic or alternate base period, and establishes that the claimant had no earnings in his basic base period, we conclude that the claimant is unable to file a valid original claim.

**DECISION:** The decision of the Administrative Law Judge is reversed.

The initial monetary determination ruling the claimant not entitled to receive benefits, effective March 28, 2022, on the basis that the claimant was unable

to file a valid original claim pursuant to Labor Law § 527 because the

claimant did not work and earn wages in at least two quarters of either his basic or alternate base period, and was not paid at least \$2,900 in wages in one of the calendar quarters of his basic base period, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER